**Teamsters Local Union No. 391, Affiliated with International Brotherhood of Teamsters, AFL–CIO (U.S. Pipeline, Inc.) *and* Teamsters Local Union No. 71, Affiliated with International Brotherhood of Teamsters, AFL–CIO (U.S. Pipeline, Inc.) *and* Jim Seitz.** Cases 11–CB–3101 and 11–CB–3102

June 19, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On February 26, 2003, Administrative Law Judge Jane Vandeventer issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondents filed an answering brief which included their brief to the judge.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

In exceptions, the General Counsel argues that the Respondents unlawfully refused to refer alleged discriminatees Seitz, Andel and Maddocks to work on the Employer's Concord, North Carolina pipeline project, pursuant to the Respondents' exclusive hiring hall agreement. Alternatively, the General Counsel argues that, even if the Respondents operated a nonexclusive hiring hall on that project, the Respondents unlawfully refused to refer the alleged discriminatees because of Seitz' protected activity. We find no merit to these exceptions.

First, the judge found, and we agree, that the evidence fails to establish that the Respondents operated an exclusive hiring hall on the Employer's project. There is no exception to the judge's finding that there was no collective-bargaining agreement between the parties that provided for an exclusive hiring hall. Nor do we find that the evidence establishes that the parties, by agreement or practice, instituted an exclusive hiring hall arrangement. Indeed, the record, including the testimony of the only two witnesses who attended the pre-job conference for the Concord project, fails to establish that the parties agreed that the Respondents would be the sole source of any specific percentage of referrals. Cf. *Carpenters Local 608*, 279 NLRB 747, 754 (1986). Nor did either of the Employer's job superintendents or the Respondents' steward—the individuals who could have explained how the referral system operated in practice—testify at the hearing. Thus, there was no showing that the Employer and the Respondents ever agreed that the Respondents would be the sole source of referrals of 50-percent of the Employer's work force, as the General Counsel contends. Indeed, documentary evidence indicates that, of the 52 employees hired for the project, 28 were hired directly by the Employer, and only 24 were referred by the Respondents.[1] Accordingly, we find no violation under the exclusive hiring hall theory.

Nor do we find merit to the General Counsel's alternative theory. To the extent there was a hiring hall arrangement between the parties, it was nonexclusive. However, under such arrangement, it was not unlawful for the Respondents to prefer their members for referral over the alleged discriminatees who were members of a different Teamsters local. *TK Productions*, 332 NLRB 110, 123–124 (2000). We also agree that the evidence does not establish that the Respondents discriminated against the alleged discriminatees in referrals because Seitz had engaged in protected activity. *Carpenters Local 537 (E.I. DuPont)*, 303 NLRB 419 (1991).[2]

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. June 19, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] We disavow the judge's statement that this exhibit does not show on its face the source of each of the employees hired. The sources are shown on the document, although Employer witness Crooks, who created the exhibit, testified that two employees who are listed as union referrals were actually hired directly by the Employer.

[2] The General Counsel has moved to amend the consolidated complaint to allege that the Respondents violated Sec. 8(b)(1)(A) by telling the alleged discriminatees that members of the Respondents would receive referral preferences for the Employer's pipeline project. We find it unnecessary to rule on this motion. Even if the motion were granted, we would conclude, for the reasons stated above, that the allegation has no merit.

*Ronald C. Morgan, Esq.,* for the General Counsel.
*J. David James* and *Seth R. Cohen, Esqs.,* for the Respondent.

## DECISION

### STATEMENT OF THE CASE

Jane Vandeventer, Administrative Law Judge. This case was tried on October 24 and 25, 2002, in Concord, North Carolina. The complaint alleges Respondent violated Section 8(b)(1)(A) and 8(b)(2) of the Act, by refusing to refer three individuals to jobs pursuant to an exclusive hiring hall arrangement, operating its exclusive hiring hall in an arbitrary and discriminatory manner, and thereby failing fairly to represent the individuals. The Respondent filed an answer denying the essential allegations in the complaint. After the conclusion of the hearing, the parties filed briefs which I have read.

Based on the testimony of the witnesses, including particularly my observation of their demeanor while testifying, the documentary evidence, and the entire record, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Employer herein, U. S. Pipeline, Inc., is a Texas corporation engaged in the construction industry. In 2000, the Employer was engaged in a pipeline construction project in Concord, North Carolina. During a representative 1-year period, the Employer derived more than $50,000 from work it performed outside the State of North Carolina. Accordingly, I find, as Respondent admits, that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondents are labor organizations within the meaning of Section 2(5) of the Act.[1]

#### II. UNFAIR LABOR PRACTICES

##### *A. The Facts*

###### 1. The Collective-Bargaining Agreement

The International Union with which Respondents are affiliated is signatory to a national agreement with various employers in the pipeline construction industry referred to in the record as the National Pipeline Agreement (NPA). In Article II of the NPA, the International agreed that "the terms of this Agreement shall be recognized by" each local with geographic jurisdiction where work was to be performed. The local union participates in a prejob conference, at which the employer, the local union, and the International Union discuss the manpower needs, duration, and timing of the job, and other matters concerning staffing of the job and application of the contract.

With regard to the hiring of employees, the NPA states: "In the event a valid nondiscriminatory exclusive referral procedure has been established by collective-bargaining between a local of the Union and an association of highway and heavy contractors in the area in which the job is to be done. . . . Employer agrees to utilize such referral procedures upon the following conditions [conditions omitted]."

The NPA goes on to state: "In the event there is no valid exclusive referral procedure established in the area where the particular job is to be done or the proper conditions set out hereinabove have not been met by the referral procedure which has been established, Employer will at the prejob conference notify Union, as one of the sources from which men are to be recruited, as to the number of men who will be needed in addition to his Regular Employees. Employer shall give preference in employment to men in the area who have had previous pipe line construction experience. It is understood that Employer may also recruit men from other sources, will hire all employees at the jobsite in a non-discriminatory manner, and shall have the absolute right to determine the competence and qualifications of applicants and employees and to reject and discharge accordingly."

The NPA required that its hiring arrangements, as set forth in the agreement, be posted by Employers and the Union. A signatory employer was permitted to staff its job up to the level of 50-percent of its employees with employees it employed regularly, commonly called "key employees" or "regular employees." This privilege obtained under either the exclusive or the nonexclusive hiring arrangement.

There was no evidence in this record that either Respondent was signatory to a collective-bargaining agreement with highway and heavy contractor employers in the Concord, North Carolina, area. Andrew Crooks, who was the Employer's Administrative Manager and Chief Information Officer at the time of the events herein, testified that he was unaware of any such collective-bargaining agreement. He further testified that as far as he was aware, the Employer most often did operate under an exclusive hiring hall arrangement in most of the locations around the country where it performed work. On that basis, he assumed that the Concord, North Carolina, location would operate in the same way. Crooks, however, did not attend the prejob meeting with the local unions, Respondents herein, and had no direct knowledge of what was discussed at that time.

###### 2. The Concord job

The Employer's job in and around Concord, North Carolina (called hereafter the Concord job), began in about midsummer 2000. The Employer's task was to build a 36" diameter pipeline for a large utility company. The Employer maintained an equipment yard, where it kept its trucks, heavy equipment, and an office. The superintendents for the Employer were Jimmy Crotts and Harold "Racer" Hutchens. The actual worksite itself changed, moving along the route of the pipeline as the work progressed.

The Employer and Respondents held a prejob conference on about August 11, 2000. As stated above, Crooks was not present, but Bobby Crotts, Jimmy Crotts and a Mr. Klyne, the office manager for the Concord job, were present on behalf of

[1] Teamsters Local Union No. 391, affiliated with International Brotherhood of Teamsters, AFL–CIO, will be referred to as Local 391 or Respondent Local 391. Teamsters Local Union No. 71, affiliated with International Brotherhood of Teamsters, AFL–CIO, will be referred to as Local 71 or Respondent Local 71. Local 391 and Local 71 will be referred to collectively as respondents.

the Employer. J. D. Wright, a business agent, and Jim Runion attended the meeting on behalf of Local 71. Steve Bishop, a business agent, attended on behalf of Local 391. Both Bobby and Jimmy Crotts were part-owners of the Employer. At the meeting, a member of Local 391, John Hudson, was designated by both Respondents to be the steward representing both locals on the Concord job. Hudson was present at the prejob conference as well. The meeting lasted for about an hour, and the parties resolved issues such as wages, benefits, drug testing, safety requirements, and the number of employees required for the job, approximately 32. Another issue which was agreed upon was that 50-percent of the employees would be brought in directly by the Employer under the regular employees or key man provisions of the NPA. According to J. D. Wright, at the meeting, Jimmy Crotts told the Respondents that he would like to have employees on the Concord job who had previously worked for the Employer. Jimmy Crotts described a job the Employer had done in Pittsboro, North Carolina in 1999, and stated that he would like to have those same drivers if the Respondents could get them.

According to Wright, Respondents referred employees to the Concord job from August through November 2000.[2] All the referrals were handled by John Hudson. Sometime in August, Wright gave Hudson a list of people who had called him expressing a desire to be employed on the Concord job. According to Wright, the first two names on his list were members of Local 71, the next three were members of a nearby North Carolina local union, Local 61, and the remaining names were in the order in which they had called Wright to express interest in the pipeline job. The Charging Party herein, Jim Seitz, appears as the eighth name on Wright's list, with Raymond Andel and Hazel Maddocks following his name, as the ninth and tenth entries.

Steve Bishop testified that shortly after the prejob conference he, too, gave John Hudson a copy of his personal list of employees who had called him and said they were interested in working on the Concord job or on any pipeline job. Bishop said that any employees who called him after that time, however, were told to call the company office at the yard and talk to John Hudson. The names on Bishop's list were also noted down in the order in which they had called him, beginning in 1999. In addition to his personal list, Bishop also passed on to John Hudson a list of employees with pipeline experience working for another pipeline employer, and a list of employees who had worked for the Employer on the Pittsboro pipeline job in 1999.

According to Wright, Seitz had called him about the Concord job in July. Seitz requested that his name, and the names of Raymond Andel and Hazel Maddocks be put on the list for the Concord job. Wright took down the names and added them to his list, as described above. Seitz mentioned that he was from North Dakota, and had worked for the Employer on a pipeline job there, as had Andel and Maddocks. Wright testified that he told Seitz that Local 71 members would be referred to the job first, before those from outside the area. Wright testified that he never informed Seitz of his placement or number on his list or on any referral list. He also testified that he told Seitz that he should stay in North Dakota until he was called; he did not tell Seitz to come to North Carolina.

Maddocks testified that she telephoned Local 71 in June, and asked to have her name and Andel's name put on the out of work list for the Concord job. The woman with whom she spoke took down both names and told her that she and Andel were the first two names on the list. There is no evidence in the record as to the identity of the person Maddocks spoke to, and no evidence as to what happened to the names she recorded.

Andel testified that he telephoned Wright in late July to verify that his name was on the list for the Concord job, and that Wright told him that Seitz, Andel, and Maddocks were numbers three, four and five on the list. According to Andel, Wright also said they should come to North Carolina as soon as possible.

Andel testified that in about mid-August, he and Seitz came to Local 71 and met with Wright in his office. At that time, Wright told them to see John Hudson about going to work on the Concord job, as Hudson was the one handling all referrals. Charging Party Jim Seitz did not testify, as he was deceased by the time of the trial. Andel, however, testified that Wright again told them that the three of them were "three, four, and five" on the list and would be the next ones hired. He told them to go to the Employer's yard the next day. Wright denied that he told the two employees that they were "three, four, and five" on the out-of-work list, and that they should come out to the yard the next day. He stated that he never uses the phrase, "out-of-work list," as Local 71 has never maintained one. He testified that he told them to go see John Hudson at the Employer's yard.[3]

Wright testified that the list of names he gave to Hudson was simply a memory jogger for his personal use, and was not a formal referral or "out-of-work" list. It was never posted or made available to the public. In addition, Wright later relayed another name to Hudson orally over the telephone, that of a Local 71 member who had called him to express a desire to go to work. Wright testified without contradiction that Local 71 does not operate a hiring hall of any kind.

Steve Bishop was also called by Seitz several times in July and August about the Concord job. Until the prejob conference in August, Bishop simply told Seitz that he did not know much about the job yet, but that Seitz should call again to check on the job. The first time Seitz called after the prejob conference, Bishop told him that the job had been delayed a little due to the utility company having trouble getting some necessaary right-of-way permits for portions of the pipeline. When Seitz told Bishop he believed he was number one on the list, Bishop replied that there was no number one, since there was no "hiring list." Bishop also told Seitz that out-of-work local members

[2] All dates hereafter are in 2000, unless otherwise specified.

[3] I credit Wright over Andel to the effect that Wright told them to go see Hudson at the Employer's yard, not that he told them they were the next to be hired. I also credit Wright's denial that he told the employees they were number three and number four on an out-or-work list. They were, in fact, numbers eight and nine. Wright's testimony overall was more consistent within itself as well as with other record evidence. Andel testified inconsistently with his affidavit on one point, and did not demonstrate a good memory overall.

would probably be the first ones to be referred. Bishop recalled that Seitz volunteered to switch his membership to Local 391. Bishop told Seitz that would not be necessary.

It is undisputed that neither Local 71 nor Local 391 operates a hiring hall of any kind. Both Wright and Bishop testified that they regarded the hiring arrangement with the Employer as a nonexclusive hiring arrangement.

3. Jim Seitz, Raymond Andel, and Hazel Maddocks

Prior to the Concord job, Andel had worked on a pipeline job for the Employer in North Dakota for approximately five months in 1999 as a bus driver and a skid driver. He had worked on another pipeline job for a different employer in June and July 2000. Maddocks, who is Andel's sister, had worked on the same two jobs as a bus driver and a dump truck driver. Seitz, who was Andel's brother-in-law, had worked as parts runner and a bus driver on the first of those jobs. At the time, they were all members of a Teamsters local union in North Dakota, Local 123.

Andel testified that on August 15, he and Seitz went to the Employer's yard in Concord, and talked to Wright there. According to Andel, it was on this day that Wright first told them that Job Steward John Hudson would be the one to talk to about getting referred. Seitz and Andel went to talk to Hudson. Hudson told them that the Employer was hiring those employees who had worked for it the previous year. Seitz told Hudson that they had worked for the Employer the previous year, but in North Dakota rather than in North Carolina. Hudson said that those from out of state could be on the "B" list. According to Andel, they talked to Hudson several times in the next couple of weeks, and he continued to tell them that the Employer was still hiring employees who had worked the 1999 North Carolina job for it.

Andel testified he and Seitz were at the Employer's yard one day in August when Seitz talked to Racer Hutchens, the job superintendent. They were acquainted with Hutchens, who had been a superintendent at the North Dakota job they had worked on the year before. According to Seitz's report back to Andel, Hutchens had said the Employer had already hired all it was going to, and it would obtain the remaining employees through the hiring arrangement with Local 71 and Local 391.

Bishop testified that near the end of August he suggested to Seitz that he and Andel try to get pipeline jobs at another pipeline jobsite in Morganton, North Carolina, where a sister local, Local 61, represented employees. He had heard from the steward on that job that there were jobs available there. Andel and Seitz did go to Morganton and did talk to the steward there. The steward on that job, Joey Parker, testified that he told both Andel and Seitz that they could go to work on the Morganton pipeline job that day, and asked them to fill out the paperwork to be put on the payroll. Parker then went to work for a few hours, and when he returned to the office, Seitz and Andel had left, having informed the office employee that they did not want the jobs.

Andel returned to North Dakota shortly before the end of August. On August 31, Maddocks arrived in North Carolina. A few days later, she spoke to John Hudson by telephone, identified herself and said she was ready to go to work. He told her that the Employer was hiring employees who had worked for it the year before. Maddocks said that she had worked for the Employer the year before, and that Jim Wright had told her she was on the list for the Concord job. Hudson said that he would check on it and get back to her. Maddocks testified that Hudson also asked her if she knew Jim Seitz. Maddocks replied that he was her brother-in-law. Hudson said that he had heard of some trouble with Jim Seitz the previous year. Maddocks said she had no connection with that, she just wanted to go to work.

Maddocks testified that Hudson called her back a week later and told her that she was number 75 or 80 on the list. Hudson said that he would not refer Andel or Maddocks to the Concord job, because Seitz was ahead of them on the list, and Hudson was afraid Seitz would "sue them" if Hudson put Andel and Maddocks on the job ahead of Seitz. Hudson did not tell Maddocks why he did not intend to refer Seitz to the Concord job.

A few days later, Maddocks went to the Employer's yard, where she ran into her foreman from the Employer's job in North Dakota. When she told him that she didn't know if she was going to get on the job, her old foreman said he would see if he could request her as his bus driver. Maddocks did not see this foreman again, and was not hired for the Concord job.

4. Employees on the Concord job

No one who actually referred or hired employees on the Concord job testified. There was documentary evidence in the form of lists of employees who worked on the Concord job. Two lists had been prepared by Employer witness Crooks from the Employer's computer records. However, there was no direct evidence of how these employees were hired, or, more specifically, whether they were hired through the Respondents as a source, from the Employer's regular employees, or through some other source. Crooks assumed that they were hired either from the Employer's regular employees or through the Respondents, but admitted that he was not present at the Concord job, and did not actually know. The exhibit listing the names of employees on the Concord job does not show on its face the source of each of the employees. While there is a notation, "Union" or "Company," on the documents, this was put on by Crooks based on his computer records and later altered, apparently after a telephone conversation with Hudson.

5. Evidence concerning Seitz' work history with the employer

The only evidence concerning the Employer's attitude toward Seitz comes from a July 27 handwritten letter from the superintendent on the Concord job, Hutchens. The letter was authenticated only as coming from the Employer's files at the Concord job yard. In it, Hutchens informed Seitz that the Employer did not intend to hire him on the Concord job as one of its "regular employees." It appears that Hutchens already had in mind a sufficient number of employees, and there was not room for Seitz.

There were several references, mostly in hearsay evidence, to Seitz having had a vehicle accident while working for the Employer in 1999, to Seitz having filed a worker's compensation claim, and to Seitz having filed a grievance with the North Dakota local union. I have not relied on any of this evidence,

as it was, if not actually incompetent or inadmissible, entitled to very little weight. In addition, with the exception of Hudson's remarks testified to by Maddocks, which will be analyzed below, there is no evidence in this record of any animus, any connection, or any causation which would link any of these incidents to the Respondent's failure to refer Seitz to the Concord job.

### *B. Discussion and Analysis*

#### 1. Exclusive or nonexclusive hiring arrangement

The first issue presented is whether the hiring arrangement on the Concord job was an exclusive hiring hall or not. The contract language quoted above clearly states that there will be an exclusive arrangement where the local union has an exclusive hiring hall agreement with "highway and heavy contractors in the area." It is undisputed that Respondents here had no such exclusive referral agreement with such contractors, and in fact, had no exclusive referral agreement with *any* employers. Neither Respondent operates any kind of an exclusive hiring hall. Under the language of the contract, therefore, the hiring arrangement falls under the second part of Article II of the NPA, a nonexclusive hiring arrangement, where the local union is but *one source* for employees. Therefore, under the plain language of the collective-bargaining agreement, the Respondents were but one possible source for employees. The Employer was, by explicit contract language, free to hire employees from other sources.

It is possible, however, for an agreed nonexclusive hiring hall to operate in practice as an exclusive hiring hall. If, for example, all the parties to the agreement treat it as an exclusive hiring arrangement, then the same duties will apply to the union as in the case of an agreed exclusive referral procedure. See, e.g., *Laborers Local 334 (Kvaerner Songer)*, 335 NLRB 597 (2001). Board law makes it clear that it is the General Counsel's burden to establish exclusivity under this theory.

In this case, it is clear that the Respondents did not regard the hiring arrangement as an exclusive hiring arrangement, and did not treat it as such. There was no out-or-work list maintained, nor were referrals made in any particular order. There were no written hiring hall rules, nor any of the other formal requirements of an exclusive hiring hall. The lists which did exist were merely notations of employees who had experience or interest in pipeline work. These lists were personal notes of Wright and Bishop, and were given to Hudson, the steward, for his convenience, apparently without any instructions on how they should be used. Other lists of employees who had worked on the Employer's 1999 pipeline job or another pipeline job, were also given to Hudson, as the Employer had expressed a desire to have experienced employees, especially those it had previously employed itself, working on the Concord job.

It is unclear whether the Employer regarded the hiring arrangement as exclusive or not, as none of the Employer superintendents who ran the Concord job testified. The exhibit listing the names of employees on the Concord job does not show on its face the source of each of the employees. While there is a notation, "Union" or "Company," on the documents, this was put on by Crooks based on his computer records and later altered, apparently after a telephone conversation with Hudson. There was no testimony by any knowledgeable witness as to the source of each applicant who was hired. As noted before, neither Jimmy Crotts, the owner and a superintendent, Racer Hutchens, the other superintendent, nor John Hudson, the Respondents' job steward, testified concerning the source for each applicant who was hired by the Employer. Thus, it has not been shown by a preponderance of the evidence that the Employer hired only by union referrals (other than the "regular employees" to which the contract entitled it). Even if it is assumed, as Crooks assumed, that the Employer treated the arrangement as an exclusive one simply because it was accustomed to exclusive arrangements in other locations of the country, the mental assumptions of one party to a written agreement cannot change the meaning of the agreement.[4]

On this record, I find that the hiring arrangement for the Concord job was a nonexclusive referral procedure, as described in the NPA.

#### 2. Respondents' duty under A nonexclusive agreement

Board law imposes on unions a duty even in a nonexclusive hiring hall situation. A union must not discriminate against applicants because they have engaged in protected activity, for example, intraunion political activity. See, e.g., *Carpenters Local 537 (E. I. Du Pont)*, 303 NLRB 419 (1991). To prove a prima facie case that a union has violated this duty, there must be proof of protected activity, animus by the union towards the individual (or individuals) based on that protected activity, an action taken which harms the individual, and a nexus between the animus and the action.

Here, it appears from the uncontradicted testimony of Maddocks that the Respondents' job steward, Hudson, told her he would not refer Andel and Maddocks because Seitz was ahead of them on the list, and jumping over his name would be a problem. With regard to Seitz, he said only that he had heard of some "trouble" with Seitz the previous year. Hudson did not specify what kind of trouble this was, or whether the supposed trouble was the reason he had not referred Seitz to the Concord job. The General Counsel argues that it should be inferred from these remarks: (1) that the trouble referred to was a grievance Seitz had supposedly filed in 1999, (2) that the filing of the grievance was protected activity, and (3) that this grievance was the reason Seitz was not referred. In addition, the General Counsel assumes that the grievance, if it occurred, was protected activity. Maddocks testified that she believed Seitz had filed a grievance in 1999. It is unclear from this record whether that grievance was against the Employer, or concerned some internal union matter. The record contains nothing about the subject matter of the grievance, and the very existence of the

[4] It appears from the testimony of Andel and Maddocks that they believed hiring for the Concord job was being done under an exclusive arrangement, and that an out-of-work list must exist, and that employees must be referred in order from this list. They may have believed this because their previous experience in North Dakota involved an exclusive referral procedure. I find that the belief of the individual employee applicants does not have any weight in determining whether the referral procedure on the Concord job was exclusive or nonexclusive.

grievance itself is based on hearsay evidence. I find that the General Counsel has not proved that Seitz engaged in protected activity.

In order to sustain the General Counsel's theory, far too many mental leaps and unsupported assumptions would have to be made. Hudson's reference to trouble with Seitz could have referred to his vehicle accident, to his worker's compensation claim, to the grievance, assuming there was such a grievance, to his heart problem, or to some other difficulty which was unknown to Maddocks. Hudson did not elaborate. The mere fact that he mentioned this to Maddocks during a conversation in which they were discussing her chances for referral to the Concord job is not sufficient to establish both animus based on this unidentified "trouble" and Seitz not being referred to the Concord job because of the "trouble." Hudson's comments to Maddocks are far too ambiguous and incomplete to support the heavy burden of meaning the General Counsel would attribute to them.

Aside from Hudson's ambiguous remarks to Maddocks, evidence of animus by Respondents towards Seitz, Andel, and Maddocks is wanting. Evidence concerning the conduct of the two business agents, Wright and Bishop, does not establish animus; on the contrary, both men acted helpfully towards Seitz, Andel, and Maddocks. Both agents passed on the three applicants' names to the job steward of the Concord job. Bishop informed them of pipeline work in another North Carolina location. I find it unnecessary to determine whether Wright did or did not inform Andel that the three North Dakota applicants were, "three, four, and five" on his list of pipeline employees. As has already been found, Wright's list was not an official "out-of-work" list, but was simply information concerning interested and available employees. Especially in view of the multiple lists of available and/or experienced employees which Hudson was given for use in finding qualified employees to refer, the order of employees on Wright's list was not of any particular importance. Nowhere in this record has it been shown that Seitz, Andel, and Maddocks were more qualified or experienced than the employees who were referred to the Concord job.

Likewise, evidence of any connection between Seitz' grievance, assuming that it existed, and assuming that it was protected activity, with Respondents failure to refer him to the Concord job is lacking. As described above, Hudson's remarks constitute the only scintilla of evidence in this record which could bear on the issue of a nexus between the assumed protected activity and the failure of Respondents to refer Seitz and the other two employees to the Concord job. Even if the other elements of a violation could be wrung from this record, I find that Hudson's ambiguous remarks to Maddocks are insufficient evidence of such a nexus.

In summary, I find that the General Counsel has not shown by a preponderance of the evidence that Respondents refused to refer Seitz, and consequently Andel and Maddocks, to the Concord job for any unlawful reason.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:[5]

ORDER

It is recommended that the complaint be dismissed in its entirety.

Dated at Washington, D.C. February 26, 2003

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.